

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
2 under the laws of the United States.

3
4 3. Defendant conducts business and has an office in the Commonwealth
5 of Pennsylvania, and therefore, personal jurisdiction is established.

6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

7
8 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and
9 2202.

10 **PARTIES**

11 6. Plaintiff is a natural person residing in Columbia, South Carolina
12 29223.

13
14 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
15 1692a(3).

16 8. Also, Plaintiff is a person granted a cause of action under the
17 FDCPA. See 15 U.S.C. § 1692k(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS
18 18687 (E.D. Pa. Dec. 22, 2000).

19
20 9. Defendant is a national debt collection company with its corporate
21 headquarters located at 507 Prudential Road, Horsham, Pennsylvania, 19044-
22 2308.

23
24 10. Defendant is a debt collector as that term is defined by 15 U.S.C. §
25 1692a(6), and sought to collect a consumer debt from Plaintiff.

1 11. Defendant acted through its agents, employees, officers, members,
2 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
3 representatives, and insurers.
4

5 **FACTUAL ALLEGATIONS**

6 12. At all pertinent times hereto, Defendant was hired to collect a
7 consumer debt and attempted to collect that debt from Plaintiff.
8

9 13. The alleged debt at issue arose out of transactions, which were
10 primarily for personal, family, or household purposes.

11 14. Beginning on or around October 1, 2011, and continuing through
12 November 22, 2011, Defendant constantly and continuously placed collection
13 calls to Plaintiff's place of employment seeking and demanding payment for an
14 alleged debt owed.
15

16 15. Defendant contacted Plaintiff, on average, at least two (2) times a day.
17

18 16. On several occasions, Plaintiff spoke with a representative of
19 Defendant, who identified herself to Plaintiff as "Janet Hall," and advised her that
20 she was unable to receive personal calls at work and could not discuss any matters
21 related to the alleged debt at work.
22

23 17. Plaintiff requested that "Janet" contact her after 5:00 p.m.

24 18. Defendant, however, ignored Plaintiff's instructions and continued to
25 contact her at her place of employment.

1 19. During one of her conversations with Defendant, occurring on
2 October 27, 2011, Defendant's representative, "Janet," threatened Plaintiff that if
3 she did not make payment, that she was going to have her "assistant" pull
4 information about Plaintiff's Human Resources Department and send information
5 about the debt to her Human Resources Department.
6

7 20. Also, "Janet" threatened Plaintiff that "papers were being filed
8 against" her.
9

10 21. Plaintiff understood Defendant's statements to mean that it was going
11 to disclose information about a debt to her employer and that it was going to
12 commence legal action against her.
13

14 22. Upon information and belief, at the time Defendant threatened to take
15 legal action against Plaintiff, Defendant did not intend to take legal action, and, to
16 date, Defendant has not taken legal action against Plaintiff.
17

18 23. Additionally, on another occasion, "Janet" claimed that Defendant
19 had returned checks from a checking account, which Plaintiff had closed because
20 Defendant had taken money out of the account causing her to have a negative
21 balance, which Plaintiff understood to mean that Defendant was attempting to
22 withdraw funds that had not been authorized by her.
23

24 24. Further, "Janet" threatened to garnish Plaintiff's wages and take
25 further legal action if Plaintiff did not pay immediately.

1 25. Again, at the time Defendant threatened to garnish Plaintiff's wages
2 and take legal action, Defendant did not intend to garnish her wages or take legal
3 action, and, to date, Defendant has not garnished her wages or taken any legal
4 action against Plaintiff.
5

6 26. Knowing that she could not receive collection calls at work, Plaintiff
7 stopped answering Defendant's collection calls.
8

9 27. Then, on November 22, 2011, Defendant's representative, Janet,
10 contacted Plaintiff's Human Resources Department and advised that she was
11 "looking for" Plaintiff.
12

13 28. Plaintiff felt forced to speak with Defendant regarding the alleged
14 debt, even though she was not permitted to receive these types of calls at work,
15 because Defendant had contacted her employer.
16

17 29. Defendant's sole purpose in continuously and repeatedly contacting
18 Plaintiff was to harass her.
19

20 30. Defendant conducted its debt collection activities in ways that were a
21 violation of the FDCPA.
22

23 CONSTRUCTION OF APPLICABLE LAW

24 31. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry,
25 deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes
strict liability, a consumer need not show intentional conduct by the debt collector

1 to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996);
2 see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding
3 unintentional misrepresentation of debt collector’s legal status violated FDCPA);
4 Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

6 32. The FDCPA is a remedial statute, and therefore must be construed
7 liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235
8 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts
9 interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d
10 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA)
11 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in
12 favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

15 33. The FDCPA is to be interpreted in accordance with the “least
16 sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168
17 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v.
18 Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA
19 was not “made for the protection of experts, but for the public - that vast multitude
20 which includes the ignorant, the unthinking, and the credulous, and the fact that a
21 false statement may be obviously false to those who are trained and experienced
22 does not change its character, nor take away its power to deceive others less
23 experienced.” Id. The least sophisticated consumer standard serves a dual
24
25

1 purpose in that it ensures protection of all consumers, even naive and trusting,
2 against deceptive collection practices, and protects collectors against liability for
3 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at
4 1318.
5

6
7
8 **COUNT I**
9 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES**
10 **ACT**

11 34. Defendant violated the FDCPA based on the following:

- 12 a. Defendant violated §1692 generally;
- 13 b. Defendant violated §1692d of the FDCPA by engaging in conduct
14 the natural consequence of which is to harass, oppress, or abuse
15 the Plaintiff in connection with the collection of a debt;
- 16 c. Defendant violated §1692d(5) of the FDCPA by causing a
17 telephone to ring and engaging Plaintiff in telephone conversations
18 repeatedly and continuously with the intent to annoy, abuse or
19 harass;
- 20 d. Defendant violated §1692e of the FDCPA by using false,
21 deceptive and misleading representations in connection with the
22 collection of a debt;
- 23 e. Defendant violated §1692e(4) of the FDCPA by threatening
24
25

1 Plaintiff with wage garnishment even though such action is not
2 intended to be taken;

3
4 f. Defendant violated §1692e(5) of the FDCPA by threatening
5 Plaintiff with legal action even though such action is not intended
6 to be taken;

7
8 g. Defendant violated §1692e(10) of the FDCPA by making false
9 representations or using deceptive means to collect or attempt to
10 collect a debt or obtain information concerning Plaintiff;

11
12 h. Defendant violated §1692f of the FDCPA by using unfair and
13 unconscionable means with Plaintiff to collect or attempt to collect
14 a debt; and

15
16 i. Defendant acted in an otherwise deceptive, unfair and
17 unconscionable manner and failed to comply with the FDCPA.

18 35. As a direct and proximate result of one or more or all of the statutory
19 violations above, Plaintiff has suffered emotional distress.

20 WHEREFORE, Plaintiff, TAMARA PERRY, respectfully requests
21 judgment be entered against Defendant, NCO FINANCIAL SYSTEMS, INC., for
22 the following:

23
24 a. Declaratory judgment that Defendant's conduct violated the Fair
25 Debt Collection Practices Act,


- b. Statutory damages pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k,
- c. Actual damages,
- d. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k
- e. Any other relief that this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, TAMARA PERRY, demands a jury trial in this case.

DATED: 12-14-11

RESPECTFULLY SUBMITTED,
KIMMEL & SILVERMAN, P.C.

By: 
Craig Thor Kimmel
Attorney ID # 57100
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
Phone: (215) 540-8888
Fax: (877) 788-2864
Email: kimmel@creditlaw.com